

IN THE SUPREME COURT OF TENNESSEE  
SPECIAL WORKERS' COMPENSATION APPEALS PANEL  
AT NASHVILLE  
November 26, 2007 Session

**KENNETH W. SLIGER v. PUTNAM COUNTY, TENNESSEE et al.**

**Appeal from the Chancery Court for Putnam County  
No. 04-392 Ronald Thurman, Chancellor**

---

**No. M2007-00978-WC-R3-WC - Mailed - July 9, 2008  
Filed - August 11, 2008**

This appeal has been referred to the Special Workers' Compensation Appeals Panel of the Supreme Court in accordance with Tenn. Code Ann. § 50-6-225(e)(3) (Supp. 2007) for a hearing and a report of findings of fact and conclusions of law. It involves an employee who returned to work after sustaining a compensable injury but who was unable to continue working after his injury worsened. He filed a petition in accordance with Tenn. Code Ann. § 50-6-241(a)(2) (2005) in the Chancery Court for Putnam County seeking reconsideration of his permanent disability. Following a bench trial, the trial court made an award based on a seventy-five percent permanent partial disability to the body as a whole, subject to a credit for the amount of the earlier settlement. The employer asserts on this appeal that the trial court erred by exceeding the cap of six times the impairment in the absence of expert proof regarding whether the employee has reasonably transferable job skills. Because we have determined that Tenn. Code Ann. § 50-6-242 (2005) requires expert proof on this issue, we vacate the judgment and remand the case for further proceedings.

**Tenn. Code Ann. § 50-6-225(e) (Supp. 2007) Appeal as of Right; Judgment of the Chancery Court Vacated and Remanded**

WILLIAM C. KOCH, JR., J., delivered the opinion of the court, in which ALLEN W. WALLACE and JERRY SCOTT, SR. JJ., joined.

Frederick R. Baker, Cookeville, Tennessee, for the appellants Putnam County, Tennessee and Putnam County Highway Department.

Craig P. Fickling, Cookeville, Tennessee, for the appellee, Kenneth Sliger.

**MEMORANDUM OPINION**

**I.**

Kenneth Sliger began working for the Putnam County Highway Department ("County") in 1996. His duties including working as a traffic "flagger" and driving a tractor. On July 18, 2003, he injured his lower back and left leg while on the job. On October 23, 2003, Mr. Sliger had surgery

to repair a ruptured disc at the L5-S1 level. As a result of the injury, Mr. Sliger and the County entered into a settlement pursuant to Tenn. Code Ann. § 50-6-206(a)(1) (2005) in which Mr. Sliger accepted a lump sum payment of \$29,000, representing a 23.84% permanent partial disability to his body as a whole. The Chancery Court for Putnam County approved this settlement on December 17, 2004.

In January 2004, Mr. Sliger had reached maximum medical improvement and was able to return to work. Dr. M. Robert Weiss, his treating physician, restricted him to lifting no more than forty pounds and proscribed excessive bending. Upon his return to work, Mr. Sliger attempted to resume driving a tractor. When the vibrations aggravated his injury, Mr. Sliger requested to be assigned to a different position. In response to his request, the County assigned him to work exclusively as a traffic flagger.

In June 2006, Mr. Sliger returned to Dr. Weiss, complaining of extreme pain in his left leg. A subsequent MRI revealed that he had suffered a recurrent disc herniation. Mr. Sliger underwent a second operation to repair the disc on June 21, 2006. Dr. Weiss released Mr. Sliger to work on June 29, 2006, assessing him with an additional two percent permanent impairment. Mr. Sliger was restricted to lifting no more than 25 pounds, and, at Mr. Sliger's request, Dr. Weiss also indicated that Mr. Sliger should not drive tractors as a part of his job.

Mr. Sliger returned to work for the County following his second surgery. However, on October 13, 2006, Mr. Sliger was permanently laid off for lack of work. Mr. Sliger then petitioned the Chancery Court for Putnam County to reconsider his workers' compensation claim pursuant to Tenn. Code Ann. § 50-6-241.

The trial court conducted a bench trial on April 5, 2007. The evidence presented at trial consisted of Dr. Weiss's deposition testimony regarding Mr. Sliger's injury, Mr. Sliger's school records, Mr. Sliger's testimony, and the testimony of Mr. Sliger's daughter. This evidence established (1) that Mr. Sliger was then sixty years old, (2) that he had not completed the tenth grade, (3) that he had never had formal vocational training, and (4) that he had previously worked in farming and factories. Mr. Sliger testified that his back condition prevented him from performing any of the work that he had performed in the past.

In its April 23, 2007 memorandum opinion, the trial court determined that the statutory ceiling of an award of six times the impairment rating did not apply because Mr. Sliger had established by clear and convincing evidence (1) that he was over fifty-five years old, (2) that he did not possess a high school diploma, and (3) that he had no reasonably transferable job skills from prior background and vocational training. The trial court granted Mr. Sliger an award representing seventy-five percent permanent partial disability to the body as a whole, which was subject to a credit to the County for the amount of Mr. Sliger's earlier settlement. The County has appealed.

## II.

Courts reviewing an award of workers' compensation benefits must conduct an in-depth examination of the trial court's factual findings and conclusions. *Wilhelm v. Krogers*, 235 S.W.3d 122, 126 (Tenn. 2007). When conducting this examination, Tenn. Code Ann. § 50-6-225(e)(2) requires the reviewing court to "[r]eview . . . the trial court's findings of fact . . . de novo upon the record of the trial court, accompanied by a presumption of the correctness of the finding, unless the preponderance of the evidence is otherwise." The reviewing court must also give considerable deference to the trial court's findings regarding the credibility of the live witnesses and to the trial court's assessment of the weight that should be given to their testimony. *Tryon v. Saturn Corp.*, \_\_\_ S.W.3d. \_\_\_, \_\_\_, 2008 WL 2098104 at \*4 (Tenn. 2008); *Whirlpool Corp. v. Nakhoneinh*, 69 S.W.3d 164, 167 (Tenn. 2002). However, the reviewing courts need not give similar deference to a trial court's findings based upon documentary evidence such as depositions, *Orrick v. Bestway Trucking, Inc.*, 184 S.W.3d 211, 216 (Tenn. 2006); *Bohanan v. City of Knoxville*, 136 S.W.3d 621, 624 (Tenn. 2004), or to a trial court's conclusions of law, *Perrin v. Gaylord Entm't Co.*, 120 S.W.3d 823, 826 (Tenn. 2003).

### III.

Tennessee's Workers' Compensation Law<sup>1</sup> permits a court to base a disability award upon a multiplier in excess of six times the anatomical impairment if the injured employee proves, by clear and convincing evidence, three of four enumerated factors:

- (1) The employee lacks a high school diploma or general equivalency diploma or the employee cannot read or write on a grade eight (8) level;
- (2) The employee is fifty-five (55) years of age or older;
- (3) The employee has no reasonably transferable job skills from prior vocational background and training; and
- (4) The employee has no reasonable employment opportunities available locally considering the employee's permanent medical condition.

Tenn. Code Ann. § 50-6-242(a). In this case, it is undisputed that Mr. Sliger does not have a high school diploma and that he is older than fifty-five years of age. However, the record contains no evidence concerning the local job market. Therefore, the case turns on whether or not the record demonstrates by clear and convincing evidence that Mr. Sliger has no reasonably transferable job skills.

The County argues that the testimony of a vocational expert is required to establish that Mr. Sliger has no reasonably transferable job skills. Mr. Sliger, on the other hand, argues that he was not required to present expert proof on the issue. We agree with the County.

The Special Workers' Compensation Panel addressed this issue in *Ingram v. State Indus.*, 943 S.W.2d 381 (Tenn. Workers' Comp. Panel 1995). The panel held that

---

<sup>1</sup>Tenn. Code Ann. §§ 50-6-101 to -801 (2005 & 2007 Supp.)

[t]he opinion of a vocational expert is necessary to establish that the employee had “no reasonably transferable job skills from prior vocational background and training” or that “the employee had no reasonable employment opportunities available locally considering the employee’s permanent medical condition,” or both.

*Ingram v. State Indus.*, 943 S.W.2d at 383. Less than one year later, another panel restated *Ingram v. State Industries* with only slightly less restrictive language. *Jernigan v. Henry I. Siegel Co.*, No. 02S01-9510-CV-00101, 1996 WL 227708, at \*2 (Tenn. Workers’ Comp. Panel May 3, 1996) (holding that “the opinion of a vocational expert is generally necessary to establish” the absence of either transferable skills or local job opportunities.)

Mr. Sliger argues that the facts of *Ingram v. State Industries* is distinguishable from the facts of this case because *Ingram v. State Industries* concerned an award of discretionary costs for an expert evaluation. He further contends that *Jernigan v. Henry I. Siegel Co.* relied on an overly broad interpretation of *Ingram v. State Industries*. This argument is undermined, however, by a number of other cases that have required expert vocational evidence to establish the absence of reasonably transferable job skills. See, e.g., *Howe v. Jones Plastic & Eng’g*, No. W2001-00555-WC-R3-CV, 2002 WL 1766638, at \*6-7 (Tenn. Workers’ Comp. Panel Mar. 6, 2002); *Cooksey v. CNA Ins. Co.*, No. W1998-00103-WC-R3-CV, 1999 WL 1249413, at \*7 (Tenn. Workers’ Comp Panel Dec. 20, 1999); *Indiana Lumbermen’s Mut. Ins. Co. v. Meade*, No. 03S01-9712-CV-00146, 1999 WL 39029, at \*2 (Tenn. Workers’ Comp. Panel Jan. 20, 1999); *Marable v. Key Indus., Inc.*, No. 01S01-9709-CH-00209, 1998 WL 778331, at \*4 (Tenn. Workers’ Comp. Panel Nov. 10, 1998).

Although not cited by Mr. Sliger, we have found only one case in which a panel affirmed an award of permanent partial disability benefits in excess of the statutory cap made without the benefit of expert vocational testimony. In *Butler v. Texas Boot, Inc.*, No. M1999-00674-WC-R3-CV, 2000 WL 1140777, at \*2 (Tenn. Workers’ Comp. Panel Aug. 14, 2000), the panel held that expert testimony was not required because the “uncontradicted, clear and convincing” medical testimony established that the plaintiff was “effectively unemployable” and, therefore, “obviate[d] the required expert medical testimony.” The evidence presented in this case does not approach this high standard.

The evidence in this record relevant to Tenn. Code Ann. § 50-6-242(a)(3) consists entirely of Mr. Sliger’s relatively brief testimony concerning his work history. Clear and convincing evidence means evidence in which there is no serious or substantial doubt about the correctness of the conclusions drawn from the evidence. *Hodges v. S.C. Toof & Co.*, 833 S.W.2d 896, 901 n.3 (Tenn. 1992). Viewed in light of *Ingram v. State Industries*, and the subsequent decisions of the Special Workers’ Compensation Panels, we simply cannot find that Mr. Sliger’s testimony in this case is sufficient to satisfy the “clear and convincing” requirement of Tenn. Code Ann. § 50-6-242(a).

We note that on at least two occasions, the Special Workers’ Compensation Appeals Panel has simply reversed the trial court and modified the judgment. *Marable v. Key Industries*, 1998 WL 778331, at \*4; *Jernigan v. Henry I. Siegel Co.*, 1996 WL 227708, at \*2. However, in both *Ingram v. State Industries*, 943 S.W.2d at 384 and *Howe v. Jones Plastic & Engineering*, 2002 WL 1766638, at \*7, the panel remanded for further proceedings and specifically permitted the parties to offer

additional proof concerning transferable skills and local job opportunities. We have concluded that such a remand is the appropriate course in this case.

**IV.**

The judgment of the trial court is vacated, and the case is remanded to the Chancery Court for Putnam County for further proceedings consistent with this opinion. We tax costs of this appeal to Kenneth Sliger, for which execution, if necessary, may issue.

---

WILLIAM C. KOCH, JR., JUSTICE

IN THE SUPREME COURT OF TENNESSEE  
SPECIAL WORKERS' COMPENSATION APPEALS PANEL

**KENNETH W. SLIGER v. PUTNAM COUNTY, TENNESSEE, ET AL**

**Chancery Court for Putnam County  
No. 04-392**

---

**No. M2007-00978-WC-R3-WC - Decided August 11, 2008**

---

**JUDGMENT**

This case is before the Court upon the entire record, including the order of referral to the Special Workers' Compensation Appeals Panel, and the Panel's Memorandum Opinion setting forth its findings of fact and conclusions of law, which are incorporated herein by reference.

Whereupon, it appears to the Court that the Memorandum Opinion of the Panel should be accepted and approved; and

It is, therefore, ordered that the Panel's findings of fact and conclusions of law are adopted and affirmed, and the decision of the Panel is made the judgment of the Court.

Costs are taxed to Kenneth Sliger, for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM